IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4422 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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NATIONAL DAIRY DEVELOPMENT BOARD - Petitioner
Versus
ARVIND M GANDHI - Respondent

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Appearance :
MR DC DAVE for Petitioner.
MR R.P. MANKAD for MR MUKUL SINHA for Respondent

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 07/12/2005

ORAL JUDGMENT

1.The petitioner, namely, National Dairy Development Board has filed this petition under Article 226 & 227 of the Constitution of India praying for quashing and setting aside the award passed by the Industrial Tribunal, Ahmedabad on 29.09.1987 in Complaint (IT) No. 30 of 1980 whereby the petitioner was directed to pay compensation in lieu of reinstatement amounting to 60 months wages to the respondent and the wages for this period were directed to be determined on the basis that the respondent's basic pay was Rs. 500/- per month.

2.The petition was admitted and rule was issued on 17.04.1989 and interim relief in terms of para 10 (II) of the petition was granted whereby the operation of the impugned award was stayed by this Court.

3.It is the case of the petitioner that the respondent was appointed as an Apprentice by letter dated 13/16.01.1978. The respondent was offered an appointment as apprentice for a period of 1 and ½ years initially from the date of joining subject to other conditions specified therein. It is also the case of the petitioner that the language employed in describing the period of training makes it clear that the period of 1 and ½ year was not an outer limit or exhaustive period of training, but was subject to further extension if need be. It is for this reason the word “initially” was employed after the words of “the period of training of one and half year”. As per the said letter of appointment, the respondent resumed training as an apprentice in System Analysis & Computer Programming. The initial period of training of 1 and ½ year expired on 31.07.1979. Since during the initial period of training, the performance of

the respondent was not satisfactory and upto the mark, the petitioner vide order dated 31.07.1979 extended the period of training for a further period of three months so as to enable the respondent to improve his performance. During the entire period of training including the extended period of three months, it was found that the respondent did not learn the trade perfectly and that his performance during the training period was not up to the mark. Therefore, the petitioner did not think it fit and proper to offer an employment to the respondent and hence, vide an order dated 29.10.1979, the petitioner relieved the respondent from training with effect from 30.10.1979. It was simply a formal relieving order since the apprenticeship of the respondent was coming to an end on 30.10.1979 by efflux of time.

4.It is also the case of the petitioner that at

the time when the relieving order dated 29.10.1979 was issued to the respondent, a charter of demand was pending adjudication before the Industrial Tribunal for wage revision and other conditions of service. It was the subject matter of Reference (IT) No. 233/79. The respondent thereafter filed a Complaint No. (IT) 30/80 in the said reference purporting to be under Section 33A of the Industrial Disputes Act, 1947 alleging the breach of Section 33 and praying for reinstatement in service with full back wages. The present petitioner filed a detailed statement of defence in the said complaint raising several issues and objected to the said complaint. The parties have led their oral evidence in the said complaint and after considering the pleadings of the parties and after considering the oral as well as documentary evidence led before the Tribunal, the Tribunal pronounced the award on 29.09.1987

holding that the respondent was a “workman” because there was no provision for extension of period of training either in the letter of appointment or in the agreement and, therefore, the respondent is deemed to have been confirmed on the regular basis after the training period of 1 and ½ year. After reaching the conclusion that the respondent had thus become “workman” automatically, the Tribunal negatived the contention about the jurisdiction and maintainability of the complaint under Sec. 33A of the Industrial Disputes Act on the ground that the order relieving the respondent from training cast a stigma because it was opposed on the ground that the respondent failed to show improvement in his performance. The Tribunal considered the said relieving order as punitive. The conclusion about the automatic confirmation was reached on a sheer misreading of the relevant conditions in the letter of appointment and the agreement and the

conclusions reached are contrary to the settled principles of law. The award was, therefore, liable to be quashed and set aside on the premises and grounds raised by the petitioner in the present petition.

5.The main issues which have been raised before the Court for its consideration are as to whether the extension of three months given to the respondent by the petitioner – Board is justified as there was no provision for extension of the apprenticeship period after one and half years and, therefore, the action of the petitioner – Board in extending the period of apprenticeship is in violation of the agreement and the appointment. The other issue which have been raised before the Court is as to whether the respondent is a workman or not in a pending dispute. The third issue which falls for this Court's consideration is as to whether after successful completion of the

apprenticeship period, the petitioner is under an obligation to offer an employment to the respondent and lastly, the issue was raised as to whether the Tribunal was justified in awarding compensation in lieu of reinstatement to the extent of 60 months wages.

6.Mr. R.P. Mankad, learned advocate appearing for the respondent – workman has taken me through the entire award of the Tribunal. He has also relied on certain judgments which have been referred to by the Tribunal while passing the impugned award. He has submitted that the Tribunal has come to the just and proper conclusion after appreciating the evidence on record and after considering the legal issues which have been raised before it. He has further submitted that there being finding of fact arrived at by the Tribunal after proper appreciation of evidence, this Court while exercising its extra ordinary jurisdiction

under Article 226 & 227 of the Constitution of India should not disturb or interfere in the said finding of fact and the award passed by the Tribunal is required to be confirmed.

7.I have gone through the award passed by the Industrial Tribunal. I have also taken into consideration all the contentions which have been raised in the present petition. I have also gone through the judgments referred to by the Tribunal and the reliance placed by it while arriving at its own conclusion. I have also seen the appointment order and the relevant document and the affidavit-in-reply as well as further affidavit which has been filed before this Court. I am of the view that law regarding automatic confirmation has undergone a change. The Courts have numerous occasions to deal with this aspect and certain guiding principles have been laid down by the Courts. Law has to be applied looking to the facts and

necessary findings can be arrived at on proper application of law looking to the facts of each case. As far as the present case is concerned, the appointment of the apprentice is for the initial period of 1 and ½ years. This fact by itself makes it very clear that the said appointment order is subject to further extension and during that period, if the period of apprenticeship is extended, it cannot be said that there was a successful completion of the apprenticeship. Before the extended period is over, if the apprenticeship is not renewed, without assigning any reason whatsoever, it cannot be termed as a punitive or stigmatic. In this connection, the Court is gaining support from the three judgments of the Hon'ble Supreme Court. The first judgment is in the case of *Municipal Committee, Sirsa V/s. Munshi Ram, (2005) 2 S.C.C. 382* wherein the Hon'ble Supreme Court has observed that the respondent having been appointed as a probationer and his

working having been found not to the satisfaction of the employer, it was open to the management to terminate his services. Assuming that there was an incident of misconduct or incompetency prior to his discharge from service, the same cannot ipso facto be termed as misconduct requiring an inquiry. It may be a ground for the employer's assessment of the workman's efficiency and efficacy to retain him in service, unless, of course, the workman is able to satisfy that the management for reasons other than efficiency wanted to remove him from services by exercising its power of discharge.

8.Another decision is in the case of *Rajasthan State Road Transport Corporation and Others V/s. Zakir Hussain, (2005) 7 S.C.C. 447*. The Hon'ble Supreme Court while referring to its earlier judgment in the case of *State of U.P. V/s. Kaushal Kishore Shukla (1991) 1 S.C.C. 691*

has observed that when the services were terminated by an order of termination simpliciter, the same can be considered as an innocuous order without any stigma or evil consequences visiting him and such an order is not open to challenge. The Court has further observed in the said judgment that the terms of appointment are governed by the letter of appointment and, therefore, the management was well within its right to terminate the services of the respondent probationer during the period of probation if his services were not found to be satisfactory during the said period. The Court has further observed that the Courts below and the High Courts have committed serious error in decreeing the suit as prayed for and for directing reinstatement with full back wages.

9.The third decision is in the case of *Kalpataru Vidya Samasthe (R) and Another V/s. S.B. Gupta*

and another, (2005) 7 S.C.C. 524 wherein the Hon'ble Supreme Court has observed that it is now a well settled principle of law that the appointment made on probation/ad hoc for a specific period of time and such appointment comes to an end by efflux of time and the person holding such post can have no right to continue in the post.

10.Considering the above judgments of the Hon'ble Supreme Court and considering the facts of the present case, the Court is of the view that since the period of apprenticeship was extended by further period of three months and during this extended period, the services of the respondent has come to an end, it cannot be said that there was automatic confirmation of the respondent and on that ground he is not entitled to be absorbed in the petitioner – Board.

11.This issue can be examined from another angle also. The respondent was appointed as an apprentice. The Industrial Tribunal has discussed this issue in the concluding para of its judgment while referring to the decision of the Hon'ble Supreme Court in the case of *Nainder Kumar and Others V/s. State of Punjab and Others, (1985 LAB IC 841)*. The Tribunal has quoted the passage from the said judgment which says that “Section 22(1) of the Apprentice Act, 52 of 1961 provides that it shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment nor shall it be obligatory on the part of the apprentice to accept an employment under the employer. This provision is, however, subject to the non-obstante clause in Sub-clause (2) of Section 22 which provides that notwithstanding anything in Sub-section (1) where there is a condition in a

contract of apprenticeship that the apprentice shall after the successful completion of the apprenticeship training serve the employer, the employer shall on such completion be bound to offer suitable employment to the apprentice and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract." It is true that under Sub-Section (2) a duty is caste upon the employer to offer suitable employment to the apprentice if the contract of apprenticeship contains a condition. Here in the present case, a condition is that the respondent was appointed as apprentice for a period of one and half year initially from the date of joining, subject to the execution of an agreement and also a surety bond to serve the petitioner Board for a period of three years after the successful completion of his apprenticeship. This condition makes it clear that the respondent – workman's

appointment was initially for a period of one and half year and further condition is that after successful completion of his apprenticeship, he will be offered a suitable job. Hence, it makes very clear that this appointment was subject to further extension and accordingly, period of apprenticeship was extended for a further period of three months. During this period of apprenticeship, original as well as extended, the petitioner felt that the services of the respondent were not satisfactory and hence, it cannot be said that there was a successful completion of apprenticeship and in this eventuality, Sub-section (2) of Section 22 of the Apprentice Act does not come into play. Despite this fact, the Industrial Tribunal has come to the conclusion that in view of the provisions contained in Sub-section (2), the employer is under an obligation to offer suitable employment to the apprentice.

12.This Court is also deriving support from the judgment of the Hon'ble Supreme Court in the case of *U.P. State Electricity Board V/s. Shiv Mohan Singh and Another, (2004) 8 S.C.C. 402* which says in unequivocal terms that an apprentice remains an apprentice trainee unless a formal order of appointment follows. The Court has further held that it is necessary to ascertain as to how the parties to the contract thought thereabout. Ordinarily, it is impermissible in law for a party to the contract of apprenticeship to allow it to be worked out and then contend that it was a contract of employment. The Hon'ble Supreme Court, in the numerous appeals, some by the employers and some by apprentices, in all of which apprentices were claiming the status of workman, have allowed the appeals filed by the employers and dismissed the appeals filed by the apprentices and the Hon'ble Supreme Court

has not treated all these apprentices as workman. This Court is, therefore, not in agreement with the submission of Mr. R.P. Mankad that this decision helps the respondent – workman. In para 115 of the judgment, the Hon'ble Supreme Court has held that whether the relationship of an employer and workman or an employer and an apprentice had been brought about, is essentially a question of fact. The Court while determining such a dispute must consider the factual matrix involved therein in the light of the provisions of the said Act. Once it is held that a contract of apprenticeship entered into by and between the employer and the workman is a genuine one and not a camouflage or a ruse, a presumption would arise that the person concerned is not a workman. Here in the present case also, there is no iota of evidence to suggest that the contract for apprenticeship entered into by and between the employer and the workman is a

genuine one and not a camouflage or a ruse and considering this criteria, the respondent cannot be considered to be a workman.

13.Since the Court is taking view that there is no automatic confirmation of the respondent workman and the respondent workman was still a probationer and the respondent workman was relieved during the period of probation, he was not entitled to any compensation and in this view of the matter, the issues which were raised before the Tribunal and finding given by the Tribunal are not relevant in light of the decisions which this Court has referred to earlier.

14.Considering the above facts and further considering the decisions referred to earlier by this Court, the present petition is accordingly allowed. Rule is made absolute to the above extent. The order passed by the

Industrial Tribunal, Ahmedabad on 29.09.1987 in Complaint (IT) No. 30 of 1980 is quashed and set aside. There shall be no order as to costs.

[K.A. PUJ, J.]

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